

Re: AOR 1975-139

NOTE: The responsive document to AOR 1975-139 is an Opinion of Counsel, not an opinion issued by the Commission, and does not constitute an Advisory Opinion. It is included in this database for archival purposes and may not be relied upon by any person.

26 FEB 1976

AOR 1975-139 issued as
OC 1975-124

OC 1975-124

Mr. James E. Mitchell
Vassalboro, Maine 04989

Dear Mr. Mitchell:

This letter is in response to yours of December 17, 1975, requesting an advisory opinion indicating the legality of a number of proposed transactions.

The Supreme Court recently held in Buckley v. Valeo, 44 U.S.L.W. 4127 (S.C. January 30, 1976), that the Commission as constituted could not be given statutory authority to issue advisory opinions. Although this part of the Court's judgment was stayed for 30 days, the Commission has determined that it will not issue further advisory opinions under 2 U.S.C. §437f during the stay period. Thus, this letter should be regarded as an opinion of counsel, rather than an advisory opinion.

The first question you raise is whether a corporation is prohibited by 18 U.S.C. §610 from selling goods or services to you or your campaign committee at cost. Such a transaction would violate 18 U.S.C. §610 because it would constitute an in-kind contribution in the amount of the difference between cost and the normal comparable charge for such goods or services. However, under 18 U.S.C. §591(e)(5), vendors may give discounts from the charges for food or beverages not exceeding a cumulative value of \$500 per candidate per election, so long as the food and beverage are provided at a charge at least equal to cost. The Commission would regard as cost the normal comparable charge for the food or beverage less the vendor's profit. See Advisory Opinion 1975-94, a copy of which I enclose.

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Your second question is whether you may legally establish a raffle with a prize to be awarded, and name the corporation providing the prize in the raffle solicitation. Additionally, you ask whether you must pay the corporation the full price for the prize and whether the answer to this question would be different if the corporation considered the prize as part of an advertising campaign. While there is no reason why you could not establish a raffle (assuming it is permitted by State law) and name the corporation in the solicitation, for the reasons stated above with respect to your first question, you must pay the normal comparable charge for the prize or the discount will constitute a corporate contribution prohibited by 18 U.S.C. §610. The only exception would be if the prize were food or beverage (provided by a corporate vendor of food or beverage) in which cases the cumulative value of the discounts may not exceed \$500.

The final question you pose is whether an employee of a partnership may work for your campaign during the hours he or she normally works for the partnership, if the employee satisfactorily completes his or her partnership work. The question you do not raise, but which is of more importance, is whether any portion of the employee's salary will constitute an in-kind contribution from the partnership.

In AO 1975-94, the Commission took the position that ". . . the payment of the salary or other compensation for services to a candidate's campaign by any person other than the candidate is a contribution under 2 U.S.C. §431(e)(4) and 18 U.S.C. §591(e)(4)." However, the Commission also concluded in its proposed regulation on disclosure that:

"No compensation is paid:

"(i) to an employee who:

"(A) is paid on an hourly or salaried basis;

"(B) is expected to perform duties for an employer for a particular number of hours per period; and

"(C) engages in political activity during what would otherwise be a regular work period; if the taken or released time is made up or completed by that employee within a reasonable period.

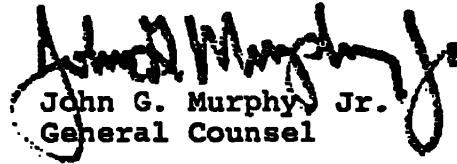
"(ii) To an employee who is paid on a commission or piecework basis, or is paid only for work actually performed, whose time is considered the employee's own to use as he or she sees fit and who engages in political activity during what would otherwise be normal working hours.

"(iii) Where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time."

In the situation you pose, the above criteria would be determinative of whether the partnership would have made a contribution to your campaign.

The foregoing represents an opinion of counsel which the Commission has noted without objection.

Sincerely yours,


John G. Murphy, Jr.
General Counsel

Attachment